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Paper No. //

Youti Kuo
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In re Application of	:	DECISION ON PETITION
Youti Kuo	:	TO WITHDRAW
Serial No. : 09/853,803	:	THE HOLDING OF
Filed : May 14, 2001	:	ABANDONMENT
For : Handheld Diagnostic Device with Renewable	:	
Biosensor	:	

This is a decision on petitioner's request filed March 16, 2004, to review the holding of abandonment mailed March 8, 2004 for failure file a response to the Office action mailed July 17, 2003. The basis for petitioner's request is the assertion that a timely response was mailed July 21, 2003. There is no fee required for this petition.

The petition is dismissed.

An Office action was mailed to applicant on July 17, 2003. The Office action included only one rejection of some of the claims, the rejection being a nonstatutory double patenting rejection based on a number of claims appearing in applicant's copending application serial No. 09/802,988.

A petition to withdraw the holding of abandonment wherein it is alleged that a proper response was filed should be filed within two months of the mailing date of the Office action from which relief is requested (37 CFR 1.181(f)) and requires: (a) a copy of the previously mailed response and/or fee verified to be a true copy of that which was filed; and (b) evidence of the receipt of the response and/or fee by the Office or a showing of timely mailing or transmission of the response. Section 711.03(c) of the Manual of Patent Examining Procedure (MPEP) at subsection I-B, provides an explanation of what is needed to satisfy item (b) above. Evidence of receipt of the correspondence in question may include a copy of a Patent and Trademark Office (PTO) stamped returned postcard receipt that properly identifies the received correspondence (see also section 503 of the MPEP). If there is no evidence of receipt of the communication, applicant may rely on the certificate of mailing or transmission guidelines set forth in 37 CFR 1.8(b) to show that the correspondence was timely mailed or transmitted by providing a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission (See also section 512 of the MPEP). If filed using the "Express Mail" procedures set forth in 37 CFR 1.10(e), the petition should include (a) a showing that the number of the "Express Mail" mailing label was placed on each piece of correspondence prior to the original mailing, (b) a true copy of the originally deposited correspondence showing the number of the "Express Mail" label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in" or other official

notification entered by the USPS, and (c) a statement, signed by the person who deposited the documents as "Express Mail" with the United States Postal Service (USPS), setting forth the date and time of deposit, and declaring that the copies of the correspondence, "Express Mail" mailing label, and returned postcard receipt accompanying the petition are true copies of the correspondence, mailing label and returned postcard receipt originally mailed or received (see also section 513 of the MPEP). In the instant situation, petitioner has failed to fulfill the requirements of item (b).

Petitioner's request does not include a copy of a PTO-stamped return receipt, nor does it include any evidence on the supplied copy of the documents that either the certificate of mailing/transmission or "Express Mail" procedures were used. Based on the information provided by applicant and a check of our records, only receipt of applicant's issue fee can be confirmed. However, the submission of the issue fee cannot in any way be considered a response to the outstanding Office action. The outstanding Office action did not indicate that the application was being allowed and that an issue fee was required.

Thus, in the absence of any direct evidence to show that a proper reply to the Office action of July 17, 2003 was received/mailed the petition requesting the withdrawal of the holding of abandonment must be dismissed.

Petitioner is advised that abandonment of this application may also be overcome by means of a Petition to Revive under 37 CFR 1.137. Such a petition may follow either of two different paths, depending upon whether the failure to properly respond to the Office letter within the time set was unavoidable, or whether it was unintentional. Each of these two different types of petition requires its own type of showing, and its own type of fee. They are discussed separately below.

1. Failure to make timely response was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to make a timely response was unavoidable (37 CFR 1.137(a)) must be accompanied by a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, by a complete proposed response to the Office action of July 17, 2003, and by the petition fee. That fee is \$55.00 (for a small entity) or \$110.00 (for a large entity).

No consideration will be given to the substance of a petition until the petition fee is received.

The showing requirement can be met submissions of statements of fact establishing that the delay resulting in failure to respond in timely fashion to the Office action was unavoidable.

2. Failure to make timely response was unintentional.

A petition to revive an abandoned application on the grounds that the failure to make a timely response was unintentional (37 CFR 1.137(b)) must be accompanied by a statement that the entire delay was unintentional, by a complete proposed response to the Office action of July 17, 2003, and by a petition fee. That fee is \$665.00 (for a small entity) or \$1,330.00 (for a large entity).

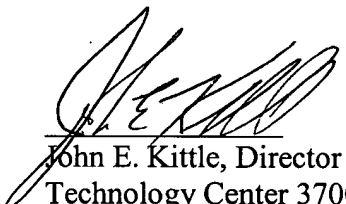
Please direct any correspondence relating to a Petition to Revive to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of Petitions. Any questions regarding the petition to revive should be directed to the staff in the Petitions Office at (703) 305-9285.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision. The reconsideration should include a cover letter entitled "Renewed Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181."

Telephone inquiries relative to this petition should be directed to Special Programs Examiner Andres Kashnikow at (703) 308-1137.

Upon the mailing of this decision, the application will be forwarded to the appropriate official to have the request for the refund of the issue fee considered.

Summary: Petition to withdraw holding of abandonment DISMISSED.



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ak/7/27/04